

[Cite as *Sauer v. Ohio Dept. of Transp.*, 2005-Ohio-2889.]

IN THE COURT OF CLAIMS OF OHIO

CAROL SAUER :  
Plaintiff :  
v. : CASE NO. 2005-02435-AD  
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶ 1} 1) On November 21, 2004, at sometime between 8:00 and 8:30 p.m., plaintiff, Carol Sauer, was traveling on the Interstate 270 West entrance ramp from US Route 23 North in Franklin County when her automobile struck a pothole causing tire and wheel damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$900.84, the cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶ 3} 3) Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage occurrence. Defendant acknowledged receiving a complaint about the pothole at approximately 8:00 p.m. on November 21, 2004. Defendant related the pothole was promptly repaired after this complaint was received. Plaintiff noted she observed defendant's repair crew arrive at the scene shortly after her damage occurrence.

{¶ 4} 4) Plaintiff has not submitted any evidence to indicate

the length of time the pothole existed prior to the incident forming the basis of this claim.

{¶ 5} 5) Defendant has asserted maintenance records show seven pothole patching operations were needed in the general vicinity of plaintiff's incident during the four-month period prior to the November 21, 2004, property damage event.

#### CONCLUSIONS OF LAW

{¶ 6} Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 7} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the pothole and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶ 8} Plaintiff has not produced any evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole for a sufficient length of time to invoke liability. Additionally, the trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the pothole appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had



journal.

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Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/laa  
4/26  
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